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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re JOHN D., A Person Coming Under The
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN D.,

Defendant and Appellant.

F042803

(Super. Ct. No. 02CEJ601054-2)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Gregory T. Fain, Judge.

Tutti Hacking, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, John G. McLean and Stan Cross, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Dibiaso, Acting P.J., Buckley, J., and Cornell, J.

In his second appearance before the juvenile court, John D. was found to have committed sexual battery (former Pen. Code, § 243.4, subd. (d)(1), now Pen. Code, § 243.4, subd. (e)(1)) and battery (Pen. Code, § 242), both misdemeanors. The court ordered that John remain a ward of the court and continue on probation subject to appropriate conditions, and declared the maximum term of confinement to be one year two months, calculated as follows: a principle term of one year for sexual battery and a subordinate term of two months for misdemeanor battery.

FACTS

On September 18, 2002, while sitting behind the victim on the school bus, John reached over and touched her breast. Shortly thereafter, he reached over and grabbed her breast. The victim yelled and told him she did not like people disrespecting her body. John did not testify but presented witnesses who testified that the touching was accidental.

DISCUSSION

On appeal, John contends, and the People concede, the court erred in calculating his maximum period of confinement because the crime of misdemeanor sexual battery calls for a six-month sentence rather than the one-year period imposed by the court. We agree. As of 2002, when the offense occurred, Penal Code section 243.4, subdivision (d)(1), provided that misdemeanor sexual battery shall be “punishable by a fine ... or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment.” Therefore, the maximum period of confinement for the two offenses is six months for the principle term (sexual battery) and two months for the subordinate term (battery, Pen. Code, § 243, subd. (a)), for a total of eight months. (Welf. & Inst. Code, § 726, subd. (c).)

DISPOSITION

Appellant’s maximum period of physical confinement is reduced to eight months. In all other respects, the orders appealed from are affirmed.